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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Jefferson L. Patrick

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EXAMINER

OLSON, MARGARET LINNEA

ART UNIT

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3782

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/826,763	Applicant(s) PATRICK, JEFFERSON L.	
	Examiner MARGARET L. OLSON	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 9-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination

1. Receipt is acknowledged of a request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e) and a submission, filed on 11/21/07.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 11 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Nowhere in the specification does it discuss that the lower upright post portion is about 1 foot in height.

4. Claim 14 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Nowhere in the specification does it discuss that

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the upright post portion may be adjusted and locked so that its top is about 4 feet over the vehicle. (Note: claim 12 and specification page 5)

5. Claim 15 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Nowhere in the specification does it discuss that the both the front bottom and rear bottom base members are both about 43 inches in length. (Note: page 4 of applicant's specification)

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 9-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 9 recites the limitation "said first assembly and said second assembly" in line 11. There is insufficient antecedent basis for this limitation in the claim. Only front and rear assemblies have been claimed prior to claim 9.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Shumate et al. (US 5,544,798). Shumate discloses an accessory rack 10 with a front platform site near 17 generally extending across the width of a vehicle and a rear platform site at 17' generally extending across the rear of a vehicle, with a front assembly having an elongated front bottom base member 17 attachable across the width of the front platform site and a rear assembly having an elongated rear bottom base member 17' attachable across the width of the rear platform site. A single front upright post 16 is connected at a lower end to the center of the front bottom base member 17 so it is generally centered with respect to the vehicle, and an elongated boat-receiving cross-member 14 is connected at the center thereof to an upper end of the single front upright post, and the elongated front boat receiving cross member is generally parallel to the elongated bottom base member (figures 1-3). A single rear upright post 16' is connected at a lower end to the center of the rear bottom base member 17' so it is generally centered with respect to the vehicle, and an elongated boat-receiving cross-member 14' is connected at the center thereof to an upper end of the single rear upright post 16', and the elongated front boat receiving cross member is generally parallel to the elongated bottom base member (figures 1-3). A single elongated upper beam member 13 extends between the front and rear boat-receiving cross members and is connected to the centers of the front and rear boat-receiving cross members, so that the front and rear upright posts and the upper beam members are centered over respective portions of the vehicle (figures 1-3).

With respect to claim 22, use of the rack of Shumate discloses this method.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-4, 9-15, 17-20, and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong (US 6,517,134) in view of Oliver (US 3,819,074).

Armstrong discloses an accessory rack that may support small boats on a transporting vehicle with a front platform site extending generally across the width of a front of the vehicle and a rear platform site extending generally across a width of a rear of the vehicle (figure 2, rear on left, front on right). The accessory rack sites have elongated bottom base members 54 attachable across a width of the platform site and a single upright post connected at a lower end to the center of the bottom base members such that the upright post is generally centered with respect to the width of the vehicle (figure 3). An elongated boat receiving member 24 is connected at the center of the upper ends of the upright posts and is generally parallel to the elongated bottom base members 54 in both the front and rear assemblies. Armstrong does not disclose a single elongated upper beam member extending between the front boat-receiving cross-member and the rear boat-receiving cross member. Oliver teaches a single elongated upper beam member 26 extending between a center of a front boat receiving cross member 28 and a center of the rear boat receiving cross member 25 so that it is

generally centered over a vehicle. It would have been obvious to one of ordinary skill in the art at the time of invention to include a single elongated upper beam between the front and rear assemblies of Armstrong, in order to give strength to the accessory rack when it is in a working position (figure 2).

With respect to claim 2, the primary reference Armstrong discloses that the front and rear upright posts 18/22 each have a lower upright post portion 22 and an upper upright post portion 18. The lower upright post portions 22 are attached at the centers of the elongated bottom base members 54. The upper upright post portions are attached to the centers of the boat receiving cross members 24. The lower and upper upright post positions are configured to be removably and adjustably engageable with each other at 58 (figure 2) so that the boat receiving cross members can be locked at a selected height over the vehicle (figure 2).

With respect to claim 3, the primary reference Armstrong discloses that the boat receiving cross members have an upturned arm 20 at each end (figure 3).

With respect to claim 4, the primary reference Armstrong discloses that the lower and upper post portions are constructed of rectangular metal tubing (column 3, lines 32-36) and provided with a series of alignable, vertically spaced apart holes 28 to allow a locking member 36 to be inserted through the lower post portions and upper post portion, locking the boat-receiving cross-member at a selected height.

With respect to claim 9, Armstrong discloses each boat-receiving cross member has an elongated middle portion 24 generally parallel to the bottom base member 54 and connected at the center to the upper end of the upper post portion. At opposed

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ends of the elongated middle portions are boat-receiving end portions 20 which are configured to be removably and adjustably engaged, and lockable with a respective end of the middle portion to provide the cross member with a selected width. Armstrong does not disclose that a stub portion on the middle of the boat-receiving cross member has a stub portion. Oliver teaches an accessory rack for carrying a boat on a vehicle with two boat receiving cross members 28 and 29 connected with a central upper beam member 26. Stub portions 44/45 are attached to the center of the middle portions of the boat receiving cross members and face the opposite assembly to removably and slidably receive and lock the upper beam member 26. Upper beam members and stub portions are adaptable so that the user may select a length of rack for a specific vehicle (column 2, line 63- column 3, line 8). It would have been obvious to one of ordinary skill in the art at the time of invention to use stub portions on the boat-receiving cross member to lock a single central upper beam member of a selected length to the accessory rack of Armstrong, in order to make the accessory rack adjustable in length and allow it to be easily disassembled and stored.

With respect to claim 10, the middle portion of the boat receiving cross member of Armstrong may be about 2 feet in length, and extend about a foot on either side of the centrally located upper post portion. Armstrong discloses the claimed invention except for the specific length of the middle portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the middle portion about 2 feet in length, since it has been held that discovering an optimum value

of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 11, the lower upright post portion of Armstrong may be about one foot in height. Armstrong discloses the claimed invention except for the specific length of the upright post portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the lower upright post portion about a foot in height, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 12, the upper post portion of Armstrong may be adjusted and locked within the lower post portion at a height so that the top of the upper post portion and elongated middle portion is about 3 feet over the vehicle. Armstrong discloses the claimed invention except for the possible height of the upright post portions. It would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust and lock the upper post portion within the lower post portion at a height so that the top of the upper post portion and elongated middle portion is about 3 feet over the vehicle, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 13, the front bottom member of Armstrong may be about 33 inches in length and the rear bottom member of Armstrong may be about 43 inches in length. Armstrong discloses the claimed invention except for the specific lengths of the

bottom members. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the front bottom member of Armstrong about 33 inches in length and the rear bottom member of Armstrong about 43 inches in length, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 14, the upper post portion of Armstrong may be adjusted and locked within the lower post portion at a height so that the top of the upper post portion is about 4 feet over the vehicle. Armstrong discloses the claimed invention except for the possible height of the upright post portions. It would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust and lock the upper post portion within the lower post portion at a height so that the top of the upper post portion is about 4 feet over the vehicle, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 15, the front bottom member of Armstrong may be about 43 inches in length and the rear bottom member of Armstrong may be about 43 inches in length. Armstrong discloses that the front and rear bottom base members are attached to the floor bed of a pickup truck (figure 2, figure 3). Armstrong discloses the claimed invention except for the specific lengths of the bottom members. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the front bottom member of Armstrong about 43 inches in length and the rear

bottom member of Armstrong about 43 inches in length, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 17, Armstrong discloses an accessory rack for carrying a boat or other elongated objects lengthwise over the middle portion of a vehicle. Front and rear end assemblies 10 are mounted to front and rear vehicle cargo racks (front and rear sections of truck cargo areas, near front and rear 56 in figure 2) with means for removably mounting and front and rear assemblies (bolts near 54, figure 3). Single, adjustable in height vertical support means 18/22 are attached to the mounting means so that the vertical support means are generally centered widthwise with respect to the cargo rack, and thereby over a middle of the respective front or rear of the vehicle (figure 3). Elongated horizontal support means 24 attached at a center thereof to the vertical support means are oriented to extend widthwise over a respective front or rear of said vehicle for receiving a boat or other objects (figure 3). A boat or other elongate objects are supported lengthwise over a middle of the vehicle by the vertical support means. Armstrong does not disclose a connection means connected between the front end assembly and the rear end assembly. Oliver teaches a single elongated upper beam member 26 extending between a center of the front end assembly 28 and a center of the rear end assembly 25 so that it is generally centered over a vehicle. It would have been obvious to one of ordinary skill in the art at the time of invention to include a connection means between the front and rear end assemblies of Armstrong, in order to give strength to the accessory rack when it is in a working position (figure 2).

With respect to claim 18, the primary reference Armstrong discloses that the front and rear vertical supports 18/22 each have a first vertical support portion means 22 and a second vertical support portion means 18. The first vertical support portion means 22 are attached at the centers of the mounting means 54. The first and second vertical support portion means are configured to be lockably, removably and adjustably engageable with each other at 58 (figure 2) so that the boat receiving cross members can be locked at a selected height over the vehicle (figure 2).

With respect to claim 19, the primary reference Armstrong discloses that the elongated horizontal support means further has an elongated middle portion support means 24 having opposed ends and are attached at the center to the upper end of the second vertical support portion means for supporting a boat or other elongate objects. Two end portion means 20 are removably, lockably, and adjustably engage the opposed ends of the middle portion support means for locking the horizontal support means at a selected width and for being removable.

With respect to claim 20, Armstrong does not disclose a single short connection means at the center of the each elongated middle portion support means. Oliver teaches an accessory rack for carrying a boat on a vehicle with two elongated middle portion support means 28 and 25 connected with a connection means 26. Short connection means 44/45 are attached to the center of the elongated middle portion support means and face the opposite middle support means to removably and slidably receive and lock the elongated connection means 26 between them. It would have been obvious to one of ordinary skill in the art at the time of invention to use short

connection means on the middle portion support means to lock a single connection means to the accessory rack of Armstrong, in order to make the accessory rack adjustable in length and allow it to be easily disassembled and stored.

With respect to claim 22, use of the structure disclosed by Armstrong as modified by Oliver discloses this method.

With respect to claim 23, use of the structure disclosed by Armstrong as modified by Oliver discloses this method.

With respect to claim 24, use of the structure disclosed by Armstrong as modified by Oliver discloses this method.

12. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong (US 6,517,134) in view of Oliver (US 3,819,074), and further in view of Toivola (US 6, 126, 052). Armstrong as modified by Oliver discloses the structure of claim 4, but does not disclose that the transporting vehicle is an ATV. Toivola teaches a vehicle-carried accessory rack with front and rear platform sites, front and rear bottom base members 30, front and rear upright post portions 40, and connected front and rear boat receiving cross members 50. The accessory rack of Toivola may be carried on an ATV (figure 1). It would have been obvious to one of ordinary skill in the art at the time of invention to carry the accessory rack of Armstrong as modified on an ATV, to allow the boat to be carried where only an ATV may travel.

13. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong (US 6,517,134) in view of Oliver (US 3,819,074), and further in view of Toivola (US 6, 126, 052) as applied in claim 5 above, and further in view of Muzzi et al.

(US 5,662,451). Armstrong as modified above discloses that the front and rear bottom base members 54 extend across a width of the attachment site, but does not disclose U-bolts connecting the structure to the platforms of a vehicle. Muzzi et al. teaches a carrying rack structure with a vertical member attached to the front and back rack of an ATV (figure 1) with U-bolts. It would have been obvious to one of ordinary skill in the art to use U-bolts to connect the modified carrying rack to the platforms of an ATV, as they are the conventional fasteners for such a purpose (Muzzi et al.; column 5, lines 18-35).

14. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong (US 6,517,134) in view of Oliver (US 3,819,074), and further in view of Whiting (US 4,630,990). Armstrong as modified by Oliver discloses the structure of claim 9, but does not disclose gear attachments attached to the rack with an opening for a tie-down. Whiting discloses an accessory rack with gear attachments 103/115 having openings for receiving tie-downs 109/131, and attached to the rack adjacent the center of the elongated middle portion (figure 1, figure 4, figure 5). It would have been obvious to one of ordinary skill in the art at the time of invention to include gear attachments for tie-downs on the rack of Armstrong as modified, in order to securely mount cargo to the accessory rack.

15. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong (US 6,517,134) in view of Oliver (US 3,819,074), and further in view of Toivola (US 6,126,052) and Vieira et al (US 5,560,666). Armstrong as modified discloses the structure of claim 20, and strengthening means that may be used between the elongated middle support means and the vertical support means (figure 5), but does

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not disclose strengthening means between a mounting means and vertical support means or an elongated middle support means and short connection means. Toivola teaches an accessory rack with strengthening means 42 mounted between vertical support means 40 and short connection means 20. It would have been obvious to one of ordinary skill in the art to put strengthening means between the vertical support means and the short connection means on the accessory rack of Armstrong as modified, in order to make the connection between the rack elements stronger. Armstrong as modified by Oliver and Toivola does not teach strengthening means between the vertical support means and the mounting means. Vieira et al. teach an accessory rack with a strengthening means 50 between the vertical support means 42 and the mounting means 32. It would have been obvious to one of ordinary skill in the art at the time of invention to put strengthening means between the vertical support means and mounting means on the accessory rack of Armstrong as modified, in order to make the connection between the rack elements stronger.

Response to Arguments

16. Applicant's arguments with respect to claims 1- 6 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Reimer (US 5,609,462) discloses a similar invention.

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18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARGARET L. OLSON whose telephone number is (571)272-9002. The examiner can normally be reached on MTWR, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Mlo

/Nathan J. Newhouse/
Supervisory Patent Examiner, Art Unit 3782